IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

MFA.No. 1294 of 1996()

IC.12/1294 of EMPLOYEES INSURANCE COURT, ALAPPUZHA
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APPELLANT/OPPOSITE PARTY

THE REGIONAL DIRECTOR
E.S.I. CORPORATION
THRISSUR

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENTS/ APPLICANT

SMT. MERCY PAUL C/O SRI.GEORGE
VALLAPARAMBIL , THOTTAKKATTUKARA
ALUVA P.O, ALUVA-8

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2007 THE COURT ON 18/06/2007 DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR . J.

M.F.A. 1294 of 1996

Dated this the 18th day of June 2007

JUDGMENT

The E.S.I. Corporation who is the 1st respondent in I.C. 12/1994 on the file of the insurance Court Alappuzha is the appellant. The appeal is filed against the judgment passed by the insurance court setting aside 16 recovery notices issued to the legal representatives of deceased T.R Paul. Sri.T.R. Paul was an Abkari contractor. He died on 19-4-1992. According to the appellant the toddy shops conducted by late.Sri.T.R Paul were covered establishments under the E.S.I Act and a liability had accrued to T.R. Paul to pay the contribution while he was alive. Because of the death of Sri.T.R. Paul the notices were issued to his widow on 23-12-1993.

2. Challenging those notices the respondent had filed I.C 12/1994 before E.I.Court Alappuzha.. After hearing both sides the insurance court took a view that in view of the definition contained in Section 2(17) of the Employees State Insurance Act, in the case of an establishment the widow has no liability . But the liability is only to the person who is responsible for the supervision and control of the toddy shops and hence the Corporation is not entitled to claim any amount. The petition was allowed and notices were quashed. Challenging that decision this M.F.A is filed.

3. The only question arising for consideration is whether the demand made by the E.S.I. Corporation to the widow of the original employer was correct or not. The specific case put forward by the respondents before the insurance Court was that her husband was not liable to pay any contribution and none of the toddy shops run by him were covered. The appellant contended that late.Sri.T.R. Paul was an Abkari contractor who was the successful bidder of 16 toddy shops during the period 1985-86 and those shops together were liable to be covered . But he did not pay the contribution. The insurance court has not entered into any specific finding whether the deceased T.R. Paul was running the said establishments and whether those establishments were liable to be covered under the provisions of the E.S.I.Act. A learned single judge of this Court in an unreported decision (**Regional Director , E.S.I. Corporation, Thrissur Vs. K.R.Vijayalakshmy (M.F.A 197/1995 decided on 18-3-2003)** has considered an identical question. There also the employer was running a toddy shop which was covered under the E.S.I.Act . But he did not pay the contribution and after the employer's death a demand was made to his legal representatives. It was contended that , the widow was not liable to pay the amount In view of the definition of the word 'principal employer' given in section 2 (17) of the E.S.I. Act. Repelling that contention this Court held as follows:

> *In such circumstances when the establishment was covered under the Act, he was liable to pay contribution. That liability was arisen during his life time and was subsisting until his death. Necessarily the liability shall fall on the legal representatives to the extent they had succeeded from the deceased. In such circumstances, what has to be considered is not the definition of the employer. The employer was the deceased Shadanan. Whether his liability has to be cleared by his legal representatives is the point involved. In such circumstances, certainly the legal representatives cannot avoid payment to the extent they have inherited from the deceased. They will only be liable to the extent of any assets obtained from the deceased.*

4. In this case also the insurance court has not considered whether deceased T.R. Paul was liable to pay the contribution. If the liability to pay the contribution arose at the life time of Sri.T.R Paul, the legal representatives are liable to pay the contribution to the extent of any property inherited from Sri.T.R. Paul. So I have no other option but to set aside the judgment rendered by the Insurance Court and remand the

matter for fresh disposal in accordance with law.

In the result the M.F.A. is allowed. The impugned order is set aside. The insurance Court is directed to take I.C 12/1994 back to file and dispose of the same afresh in accordance with law after giving reasonable opportunity to both sides to adduce evidence. The parties shall appear before the insurance Court on 19th July 2007.

K.PADMANABHAN NAIR ,JUDGE

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